

MATTHEW T. GREGORY

Attorney at Law

Second Floor, V.S. Sablan Building

Chalan Piao

PMB 419, Box 10000

Saipan MP 96950

Telephone: (670) 234-3972

Facsimile: (670) 234-3973

Attorney for World Corporation

FILED

Clerk
District Court

DEC 22 2005

For The Northern Mariana Islands

By _____
(Deputy Clerk)

DAVID J. LUJAN

IGNACIO C. AGUIGUI

LUJAN, UNPINGCO, AGUIGUI & PEREZ LLP

Attorneys At Law

Suite 300 Pacific News Building

238 Archbishop Flores Street

Hagåtña, Guam 96910

Telephone: (671) 477-8064/5

Facsimile: (671) 477-5297

Attorneys for World Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE

NORTHERN MARIANA ISLANDS

YU SUK CHUNG,

Plaintiff,

vs.

WORLD CORPORATION,

Defendant.

) Civil Action No. **04-00001**

)
)
) **MEMORANDUM IN SUPPORT OF MOTION**
) **FOR COSTS PURSUANT TO RULE 68 OR**
) **IN THE ALTERNATIVE TO AMEND THE**
) **JUDGMENT TO INCLUDE COSTS**

)
)
) Date: FEB 16 2006
) Time: 8:30am
)

1 Defendant World Corporation respectfully submits this Memorandum of Law in Support of its
2 MOTION FOR COSTS PURSUANT TO RULE 68 OR IN THE ALTERNATIVE TO AMEND THE
3 JUDGMENT TO INCLUDE COSTS. Said motion is brought pursuant to Rule 68 and 59 of the
4 Federal Rules of Civil Procedure and the Declaration of Matthew T. Gregory in support of said motion.

5 6 INTRODUCTION

7 On December 8, 2005 this court issued a judgment on the plaintiff's claim for breach of contract
8 and a mistrial on the plaintiff's claim for fraudulent misrepresentation. The judgment of December 8,
9 2005 awarded the plaintiff \$136,665.00 for the breach of contract claim. The judgment did not discuss
10 which party would bear the costs of this action. However, defendant made a rule 68 offer of judgment
11 on October, 1, 2005 in the amount of \$175,000. *Declaration of Matthew T. Gregory*. Plaintiff did not
12 accept said offer of judgment and thus is liable to pay for costs incurred pursuant to rule 68 of the
13 Federal rules of civil procedure.

14 15 ARGUMENT

16 I. A RULE 68 OFFER OF JUDGMENT IS DESIGNED TO ENCOURAGE EFFICIENT 17 SETTLEMENTS PRIOR TO TRIAL.

18 Rule 68 of the Federal Rules of Civil Procedure provides in pertinent part:

19 At any time more than 10 days before the trial begins, a party defending against a claim may serve
20 upon the adverse party an offer to allow judgment to be taken against the defending party for the money
21 or property or to the effect specified in the defending party's offer, with costs then accrued.... An offer
22 not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding
23 to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer,
24 the offeree must pay the costs incurred after the making of the offer.

1 Rule 68 is intended to encourage settlements and avoid protracted litigation." *In the Delta*
2 *Airlines Inc. v. August*, 450 U.S. 346, 352, 101 S.Ct. 1146, 1150, 67 L. Ed. 2d. 287 (1981). The
3 Supreme Court in this case stated that: "In all litigation, the adverse consequences of potential defeat
4 provide both parties with an incentive to settle in advance of trial. Rule 68 provides an additional
5 inducement to settle in those cases in which there is a strong possibility that the plaintiff will obtain a
6 judgment but the amount of recovery is uncertain". See also *Marek v. Chesney*, 473 U.S., 1, 5, 105 S.
7 Ct. 3012, 3014, 87 L. Ed. 2d. (1985). ("the rule prompts both parties to a suit to evaluate the risks
8 and costs of litigation, and to balance them against the likelihood of success upon the trial on the
9 merits.") In this case, the offer judgment is significantly larger than the amount a verdict. This is just
10 the type of case that Rule 68 was meant to be used for. If this offer of judgment had been accepted,
11 both parties would have been spared the needless expense of a one-month trial. This court should not
12 rewarded plaintiff for such conduct.

13
14 **II. ALL THE REQUIREMENTS FOR A RULE 68 MOTION OFFER OF JUDGMENT HAVE**
15 **BEEN MET.**

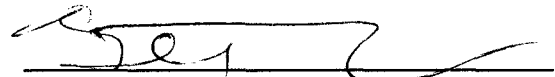
16 All the requirements for awarding costs to the defendant pursuant to Rule 68 have been met.
17 Plaintiff was timely served with the offer of judgment. Plaintiff failed to timely accept said offer
18 judgment. The judgment of \$136,665.00 for the breach of contract claim is far less than the \$175,000
19 offer of judgment. Costs will certainly not be sufficient to alter the application of the offer of judgment
20 to this trial. Therefore, this court should issue an order granting costs to the defendant pursuant to Rule
21 68 of the Federal Rules of Civil Procedure, pending calculation of said costs.

CONCLUSION

Based on the foregoing, Defendant World Corporation respectfully requests that this Court issue an order granting defendant their costs pursuant to Rule 68 of the Federal rules of civil procedure, or in the alternative that the judgment be amended to reflect the taxing of these costs against the plaintiff.

Dated this 22nd day of December, 2005.

MATTHEW T. GREGORY, ESQ.
LUJAN UNPINGCO AGUIGUI & PEREZ LLP


MATTHEW T. GREGORY
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing DEFENDANT'S NOTICE OF MOTION & MOTION, DECLARATION IN SUPPORT AND MEMORANDUM FOR COSTS PURSUANT TO RULE 68 OR IN THE ALTERNATIVE TO AMEND THE JUDGMENT TO INCLUDE COSTS was by me or at my direction served on 12/23/05 via hand delivery to:

Colin M. Thompson
Attorney at Law
Lower Base
P.O. Box 501280
Saipan, MP 96950

Robert T. Torres
Attorney at Law
1st Floor, D'Torres Building
Middle Road Garapan
P.O. Box 503758
Saipan, MP 96950


MATTHEW T. GREGORY